

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

STEVEN ROCHA,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE  
 INSURANCE COMPANY,

Defendant.

Case No.: 2:14-cv-1423-GMN-VCF

**ORDER**

Pending before the Court is the case of *Rocha v. State Farm Mutual Automobile Insurance Company*, (2:14-cv-1423-GMN-VCF). On September 3, 2014, the Court ordered that Defendant show cause as to why this case should not be dismissed for lack of subject matter jurisdiction. (ECF No. 4). On September 17, 2014, Defendant filed a Response. (ECF No. 9). For the reasons stated herein, the Court will remand this case to Clark County District Court.

**I. BACKGROUND**

This action centers upon Plaintiff Steven Rocha's allegations that Defendant State Farm, his insurer, breached the underinsured motorist provisions of his policy by refusing to tender the limit of \$15,000 following an auto accident that occurred on April 26, 2013. (Compl. 2:20-3:19, ECF No. 1-1). This case was originally filed in Clark County District Court on August 5, 2014. (*Id.* at 1). On September 3, 2014, Defendant removed the case, citing this Court's diversity jurisdiction pursuant to 28 U.S.C. § 1332. (Pet. for Rem. 2:1-5, ECF No. 1).

1 The Complaint sets forth three causes of action, upon which Plaintiff seeks to  
2 recover general damages and punitive damages, each in excess of \$10,000, as well as  
3 unspecified amounts for special damages and attorneys' fees. (Compl. 7:1-8).

## 4 **II. LEGAL STANDARD**

5 "If at any time before final judgment it appears that the district court lacks subject  
6 matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). Removal statutes  
7 are strictly construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566  
8 (9th Cir. 1992). "Federal jurisdiction must be rejected if there is any doubt as to the right  
9 of removal in the first instance." *Id.* (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d  
10 1062, 1064 (9th Cir. 1979)). "Where it is not facially evident from the complaint that  
11 more than \$75,000 is in controversy, the removing party must prove, by a preponderance  
12 of the evidence, that the amount in controversy meets the jurisdictional threshold."  
13 *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003).

## 14 **III. ANALYSIS**

15 This Court has original jurisdiction over all civil actions in which the amount in  
16 controversy: (1) exceeds the sum or value of \$75,000; and (2) is between citizens of  
17 different States. 28 U.S.C. § 1332(a). As discussed *infra*, Defendant fails to establish that  
18 the amount in controversy exceeds \$75,000, and therefore the Court will remand this  
19 action.

20 In its Response, Defendant asserts that this case satisfies the amount in  
21 controversy requirement because Plaintiff: (a) might seek medical costs in excess of  
22 \$42,261; (b) might seek damages for emotional distress in excess of \$80,000; (c) has  
23 requested attorneys' fees; and (d) has demanded punitive damages. (Def.'s Resp., ECF  
24 No. 9). The Court will address each of these arguments in turn.

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1           ***a. Medical Costs***

2           Without providing any evidence, Defendant asserts, “Although not stated in the  
3 Complaint, it is believed that [Plaintiff] claims to have incurred medical expenses of  
4 \$28,261.00 as a result of the collision. Plaintiff also alleges ongoing injury as a result of  
5 the accident, as well as necessity for ongoing and future medical care in excess of  
6 \$14,000.00.” (Def.’s Resp. 1:28-2:3, ECF No. 9). It is unclear how Defendant arrived at  
7 these particular amounts, as the Complaint states only that Plaintiff has suffered injuries  
8 “in an amount in excess of \$10,000.” (Compl. 7:3, ECF No. 1-1). Because Defendant  
9 does not provide evidence to support its assertion or even state the basis for its belief that  
10 Plaintiff will seek these particular amounts, it has failed to demonstrate a likelihood that  
11 Plaintiff will seek anything more than the \$10,000 value put forward in the Complaint.  
12 Accordingly, in regard to medical costs, the Court will consider only \$10,000 to be in  
13 controversy.

14           ***b. Emotional Distress***

15           Similarly, without citing to the Complaint or any evidence, Defendant states, “[I]t  
16 is anticipated that Plaintiff will seek \$80,000 - \$100,000” in order to “compensate for the  
17 physical and emotional impact the accident had on Plaintiff’s life.” (Def.’s Resp. 5:15-18,  
18 ECF No. 9). While it is conceivable that Plaintiff could seek such an amount based on  
19 emotional distress, Defendant has failed to point to any particular facts or allegations  
20 showing that Plaintiff is likely to seek such a large sum. Thus, Defendant has failed to  
21 carry its burden and the Court will not consider this amount within its calculation.

22           ***c. Attorneys’ Fees***

23           Defendant requests that the Court consider Plaintiff’s request for attorneys’ fees as  
24 part of the amount in controversy. However, Defendant has not set forth any basis under  
25 which an award of attorneys’ fees may be warranted in this case, nor has it provided any

evidence as to the amount of attorneys' fees Plaintiff might reasonably incur. In order for a court to include a potential award of attorneys' fees within an amount in controversy calculation, the removing party must (1) identify an applicable statute which could authorize an award of attorneys' fees and (2) provide an estimate as to the time the case will require and opposing counsel's hourly billing rate. *See, e.g., Surber v. Reliance Nat. Indem. Co.*, 110 F. Supp. 2d 1227, 1232 (N.D. Cal. 2000) (holding a defendant's statement that the opposing counsel's fees "may well, in and of themselves, exceed the jurisdictional minimum" did not suffice to create subject matter jurisdiction); *Wilson v. Union Sec. Life Ins. Co.*, 250 F. Supp. 2d 1260, 1264 (D. Idaho 2003) (stating a defendant "must do more than merely point to [a plaintiff's] request for attorney's fees; upon removal it must demonstrate the probable amount of attorney's fees"). Therefore, Defendant has not satisfied its burden to show that an award of attorneys' fees might be authorized in this action, and the Court cannot consider such an award as part of the amount in controversy.

***d. Punitive Damages***

Defendant asserts, "[I]f Plaintiff prevails on his punitive damages claim, Plaintiff would likely be seeking an amount far in excess of \$75,000.00 as exemplary damages alone" and therefore "Plaintiff's claim for punitive damages alone puts an amount in controversy that is sufficient to satisfy the jurisdictional requirement." (Def.'s Resp. 6:7-13, ECF No. 9). While Defendant is correct that the Court can, in some instances, consider a potential award of punitive damages to be within the amount in controversy, "it is not enough to tell the Court that [a plaintiff] seek[s] punitive damages, [the defendant] must come forward with evidence showing the likely award if [the plaintiff] were to succeed in obtaining punitive damages." *Wilson*, 250 F. Supp. 2d at 1264 (D. Idaho 2003); *see also, e.g., Burk v. Med. Sav. Ins. Co.*, 348 F. Supp. 2d 1063, 1069 (D.

1 Ariz. 2004). Furthermore, a court cannot consider awards issued in other actions unless a  
2 defendant identifies similarities which raise an inference that such an award might be  
3 warranted in the case at bar. *See, e.g., Conrad Associates v. Hartford Acc. & Indem. Co.*,  
4 994 F. Supp. 1196, 1201 (N.D. Cal. 1998). Because Defendant has failed to identify any  
5 particular facts or allegations which might warrant a large punitive damage award, the  
6 Court will not consider punitive damages within its calculation.

7 Therefore the evidence put forward by Defendant demonstrates only that Plaintiff  
8 is seeking \$10,000—far below the \$75,000 minimum required for diversity jurisdiction.  
9 Accordingly, the Court will remand this case.<sup>1</sup>

#### 10 **IV. CONCLUSION**

11 **IT IS HEREBY ORDERED** that that this action is remanded to Clark County  
12 District Court. The Clerk is instructed to close the case.

13 **DATED** this 12th day of November, 2014.

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Gloria M. Navarro, Chief Judge  
United States District Court

<sup>1</sup> Because Defendant has failed to carry its burden as to the amount in controversy, the Court need not determine whether complete diversity exists between Plaintiff and Defendant.